

## TIO Determination – 10 October 2016

### (De-identified for publication)

This document sets out my decision in relation to a complaint raised by the Consumer against the Provider.

#### **Decision**

On the basis of the information provided, my decision is the Provider must refund \$660. The Provider must pay this amount to the Consumer within 5 days of the TIO notifying it of the Consumer's signed acceptance of this decision.

#### **Background**

On 3 July 2015, the Consumer placed an order for a wireless internet service with the Provider. The contract had a minimum four month term at \$165 per month with a total cost of \$660 and commenced on or about 5 July 2016. The Consumer and his housemates intended to use this service for four months while they lived in Jindabyne.

On 6 July 2015, the Provider debited \$660 from the Consumer's credit card.

#### **The complaint**

The Consumer says the service was unusable, with internet pages not loading and drop outs. He says he tried to troubleshoot with the Provider over the phone but with no success. The Consumer says on 8 July 2015, the Provider told him it would refund the \$660 he had paid.

The Consumer said the Provider suspended his account and he used services from other providers after this, but the Provider has never refunded the \$660 he paid.

#### **The Provider's response**

The Provider says it provided the Consumer with the service as agreed and the Consumer is not entitled to any refund.

#### **Preliminary view**

On 25 August 2016, I issued my preliminary view to both parties. My view was the Provider should refund \$660 to the Consumer within 10 business days.

The Consumer accepted my view.

The Provider did not respond.

## Assessment

### Were services supplied as agreed?

I am satisfied services were supplied as agreed on 5 and 6 July 2015.

However, I have not seen any evidence to suggest the service continued after those dates.

The Consumer signed up for an internet plan with the Provider on 3 July 2015. He says the service did not work. The Provider disputes this and says the service was provided as agreed.

Usage data provided by the Provider shows the Consumer did have some use of the service, with sessions times recorded on 5 and 6 July 2015 as follows:

- on 5 July 2015, the Consumer had an active connection for an approximate total of 8 minutes and was able to download approximately 13Mb of data
- on 6 July 2015, the Consumer had an active connection for an approximate total of 6 hours and was able to download approximately 413 Mb of data

The data shows the service had a download speed of 2Mb/s.

On 6 July there appear to have been at least 15 individual sessions with only five of these terminations appearing to be directly requested by the user (“User-Request”), which tends to support the Consumer’s claim about the dropouts.

The Consumer says he attempted to troubleshoot the problems with the Provider on 8 July, testing the signal from inside his residence and then outside at the Provider hotspot across the road. However, while his devices would connect to the hotspot when he was directly under it, when he moved only two metres away, the signal would drop out again.

The Consumer says the Provider told him his antenna on his laptop may not have been sufficient to receive the Provider’s wireless signal. The Consumer disagreed with this and the parties agreed to end the contract.

### Did the Provider agree to refund the Consumer’s payment?

The Consumer said, after the troubleshooting he attempted on 8 July 2015, the Provider’s representative said he would refund the \$660 he had paid, the Consumer said the Provider’s representative said words to the effect that “we normally don’t do this...we will just give you a refund” and “I’ll suspend your account.”

The Provider says it is not liable to refund any money to the Consumer because a valid contract was in place.

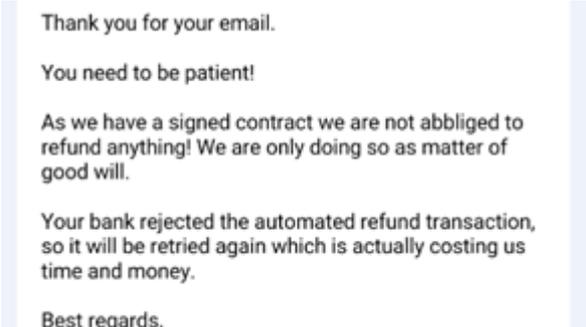
The order form includes the following term:

*“the applicant acknowledges they have read and agree with the Provider’s terms and conditions documents (available online).....the applicant also acknowledges that cancelation fees apply to any the Provider plan outlined above terminated prior to the expiration of plan duration outlined above and on our website...”*

The Consumer said he could not use the service after 8 July 2015. After 8 July he purchased data using a pre-paid hotspot device as well as mobile data packs from other Providers. He says that these services were used up until the time that he left Jindabyne “at the end of the Australian winter”. He provided screenshots of bank records showing purchases for data from other Providers on 11 occasions between 16 July and 12 October 2015.

The weight of information supports a conclusion that the Consumer received no services from the Provider after 8 July 2015 and, despite the contract term relating to cancellation fees, the Provider agreed to refund the payment of \$660.

In forming this view, I have taken into account the following email from the Provider to the Consumer dated 5 August 2015:



Thank you for your email.

You need to be patient!

As we have a signed contract we are not abliged to refund anything! We are only doing so as matter of good will.

Your bank rejected the automated refund transaction, so it will be retried again which is actually costing us time and money.

Best regards,

In my view, the email demonstrates the Provider told the Consumer it would refund the amount to him as a goodwill gesture. I consider it is implicit in this offer that the contract between them had been terminated.

The Consumer’s reliance on this representation is evident from his decision to buy data from other providers from 16 July 2015.

## Telecommunications Consumer Protection Code 2012

In my view, the Provider is in breach of clause 8.2.1 of the Telecommunications Consumer Protection Code 2012. This is because the Provider has failed to deliver the agreed resolution which was a refund of \$660 to the Consumer.

I am satisfied there was an agreed resolution to the Consumer’s complaint about the service and the Provider had offered to refund his payment, to which the Consumer had agreed.

Chapter 8 of the Telecommunications Customer Protection Code 2012 sets out what telecommunications suppliers must do when consumers make complaints.

Clause 8.2 provides:

*Consumers of former Consumers who make a complaint to a Supplier will be treated with fairness and courtesy, and their Complaint will be dealt with objectively and efficiently by the supplier.*

*8.2.1 A Supplier must take the following actions to enable this outcome ...*

- (xiii) completing all necessary actions to deliver the Resolution offered within 10 Working Days for the Consumer's or former Consumer's acceptance of that Resolution unless:*
  - A. otherwise agreed with the Consumer or former Consumer;  
or*
  - B. the actions are contingent on actions by the Consumer or former Consumer that have not been completed....*

The Provider should refund the agreed amount within 5 days of the TIO notifying it of the Consumer's signed acceptance of this decision.

Judi Jones  
**Ombudsman**

## Attachment A – relevant correspondence and information

I have considered the following information in reaching my decision:

1. An order form for the Provider's service signed by the Consumer on 3 July 2015
2. An excel spreadsheet of usage recorded by the Consumer on 5 and 6 July 2015
3. An email from the Consumer to the Provider support dated 8 July 2015 requesting confirmation that the services had been cancelled
4. Emails between the Provider and the Consumer dated 5 and 19 August 2015 relating to the processing of \$660 refund
5. Emails from the Provider to the TIO dated 15 April 2016
6. Emails from the Consumer to the TIO dated 20 and 23 May 2016